



Community Supports
for people with
developmental disabilities

Guardianship Information

Information for Adults

Each American citizen, when he or she reaches the age of 18, including each individual with a developmental disability, is legally an adult. As an adult, each person is legally responsible for making decisions on behalf of him/herself. However, if a person lacks the ability to give informed consent, parents or other interested people may want to consider applying for guardianship of the individual with the disability.

What is guardianship?

Guardianship is a court-ordered relationship between a competent adult (the guardian) and an adult with a disability. After a court appointment, the guardian becomes a substitute decision-maker for the person with the disability.

In addition, the court gives the guardian the authority to exercise specific rights on behalf of the person with the disability and at the same time takes those rights away from the person with the disability. Guardianship is a very restrictive procedure and should only be used when necessary.

A parent of a child under age eighteen is

the natural guardian of his or her child, and a court appointment is not necessary to create or validate the status of the parent. However, parents do not automatically remain the guardians of a son or daughter with a disability when the son or daughter turns eighteen years old. Only a court order can appoint the parent guardian of their son or daughter eighteen years of age or older.

How is guardianship established?

If parents or relatives want to become the guardian of an individual with a disability, they must file legal documents with the court. They may either hire an attorney or they can file their own papers. Sample forms may be obtained at the Law Library in the Supreme Court Building, 451 W. State Street, Boise, Idaho 83720, or call your local Department of Health and Welfare, Developmental Disabilities Program, ACCESS Office (See back for locations and telephone numbers).

Costs incurred vary and may include filing fees, payment for an attorney to represent the parent, payment for an attorney to represent the person with a disability, and fees associated with

required evaluations. The Idaho law that deals with guardianship is **Idaho Code 66-405**. This law concerns individuals who have developmental disabilities.

Under this law, the petitioner (the person who wants to be the guardian) must prove that the individual with the disability is unable to meet essential requirements to maintain health and safety, and the proposed guardian will act in the best interest of the person with the disability.

The law allows for full or partial guardianships. The court order will specify the nature and scope of the guardianship.

The powers of the guardian may include the following:

- Authority to determine the individual's residence, care, habilitation, and employment.
- Responsibility to assure that the individual's basic needs for food, clothing and shelter are met.
- Authority to consent to medical care needed by the individual.
- Responsibility to keep the individual's financial affairs in order.

Limits to Guardianships

There are some things a guardian cannot do. Review what decisions the guardian will be able to make and what rights you will keep. Under Idaho Code 66-405, the

guardian accepts no personal liability for debt incurred by the individual with the disability. The guardian is responsible for debts of the individual only to the extent of the individual's resources and under certain circumstances for items like food, shelter or "necessities."

When guardianship is being considered for an individual with a disability, the individual is entitled to due process. He or she is entitled to prior notice, to an attorney, and to be present at the hearing.

Options

There are alternatives to guardianships that can be explored.

Financial — If a person's concerns are mainly financial, consider:

Representative payee for Social Security benefits. The payee receives the monthly payment instead of the eligible person. This requires that application be made to the Social Security Administration. Guardianship is not required.

Joint Bank Accounts do not require legal guardianship status.

Trusts controlled by a trustee can hold both assets and income for the benefit of the individual.

Medical — If a person's concerns are medical issues, guardianship may not be necessary. Guardianship is not essential for consent to medical treatment.

If an individual is incapable of giving consent to medical care, it may be given by a parent, spouse, or guardian. If none of these people are available, a relative or other person responsible for health care may authorize treatment.

Powers of Attorney

A power of attorney is the designation by a competent person to act on behalf of another. It is a voluntary designation by a person of sound mind. The person granting the power of attorney is free to define the scope of authority of the designated person, and usually powers of attorney are given for limited and narrowly defined purposes. The use of a power of attorney needs to be discussed and reviewed carefully.

Conservatorship

A person can be appointed by the court to manage or make decisions about the property of a protected person. Like a guardian, a conservator normally is created by a court order. Appointment of a conservator may be made if the court determines the following:

(1) The person is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

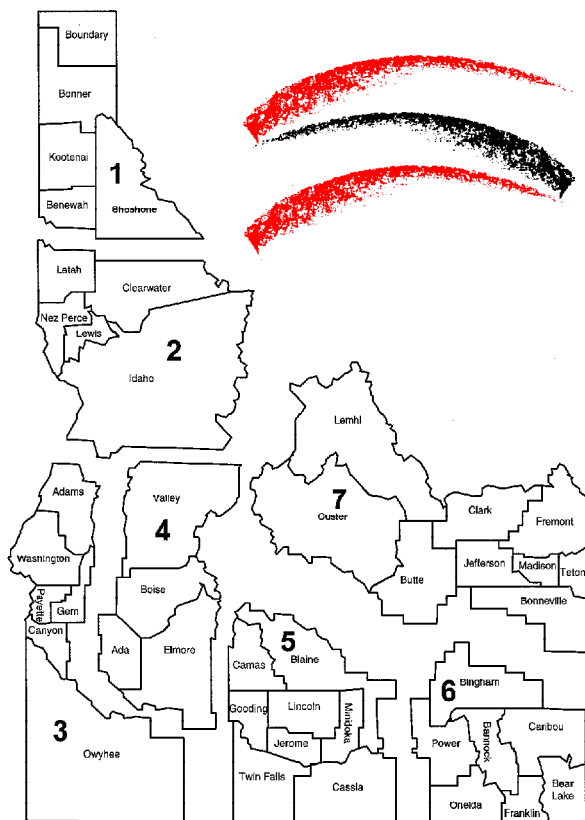
(2) The person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain and provide funds.

People may be a friend, offer assistance, give advice, share opinions, or just be there for another person without being a guardian. And if you do have a guardian, you can tell them how you feel and what kinds of things you want.

If you think your guardian isn't acting in your best interests, you can go back to court and ask for a change. Communication is important.

Where can you get more information?

Call the Health and Welfare office nearest your home:



Region 1
Coeur d'Alene (208) 769-1409
Kellogg (208) 784-1351
Sandpoint (208) 265-4593

Region 2 1-800-393-4337
Moscow (208) 883-4529
Lewiston (208) 799-3460
Grangeville (208) 983-2522
Orofino (208) 476-0743

Region 3 1-800-981-2302
Caldwell (208) 454-0421

Region 4
Boise (208) 334-0900
Mountain Home (208) 587-8452

Region 5 1-800-432-3255
Twin Falls (208) 736-2182
Rupert (208) 436-5711

Region 6 1-800-841-7874
Pocatello (208) 234-7900
Blackfoot (208) 785-5826

Region 7 1-800-525-2232
Idaho Falls (208) 525-7223
St. Anthony (208) 624-3744
Salmon (208) 756-2016

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